

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2017-207-E**

**IN RE:**

Friends of the Earth and Sierra Club,	)	SCE&G'S MOTION
Complainant/Petitioner v. South Carolina	)	TO DISMISS COMPLAINT/PETITION OF
Electric & Gas Company,	)	FRIENDS OF THE EARTH AND
Defendant/Respondent	)	SIERRA CLUB
_____	)	

**INTRODUCTION**

South Carolina Electric and Gas ("SCE&G") hereby moves under 10 S.C. Code Ann. Regs. 103-829 (2012) to dismiss the Complaint/Petition filed jointly by the Friends of the Earth and the Sierra Club (the "Complainants"). The grounds for this motion are that the Complainants seek relief which, for two reasons, is now moot.

**BACKGROUND**

On June 22, 2017, Friends of the Earth and the Sierra Club (the "Complainants") filed a Complaint/Petition seeking "a full Commission review of Project costs, alternatives and remedial measures," including refunds or reparations of rates lawfully charged to customers. (Compl./Pet. At 6.) The Complaint/Petition specifically sought an order halting construction of the new nuclear development project. On July 31, 2017, SCE&G cancelled the project. On August 1, 2017, SCE&G filed the Petition of South Carolina Electric & Gas Company for Prudency Determination Regarding Abandonment, Amendments to the Construction Schedule, Capital Cost Schedule and Other Terms of the BLRA Orders for the V.C. Summer Units 2 & 3 and Related Matters in Docket No. 2017-244-E. By filing this docket, SCE&G intended to address the statutorily authorized matters related to its nuclear project and the decision to abandon it, all as stated in SCE&G's Motion to Dismiss and Reply to the Response in Opposition, filed July 19,

2017 and July 26, 2017, respectively, in the present docket.<sup>1</sup> The basis for SCE&G's Motion to Dismiss at this time was, among other reasons, that SCE&G's later filing of its own Petition would render the matters in this docket moot.

SCE&G later withdrew its petition in Docket No. 2017-244-E, and, on January 12, 2018, filed, along with Dominion Energy, Inc., the Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Inc. for review and approval of a proposed business combination between SCANA Corporation and Dominion Energy, Inc., as may be required, and for a prudency determination regarding the abandonment of the new nuclear development project and associated merger benefits and cost recovery plans in Docket No. 2017-370-E.

On July 2, 2018, the Commission issued Order No. 2018-459 in Docket No. 2018-217-E, which temporarily reduces rates to SCE&G's customers by approximately 15% starting from April 1, 2018. The South Carolina General Assembly directed the Commission to impose this rate reduction pursuant to 2018 South Carolina Laws Act 287 ("H.B. 4375"), which was passed on June 28, 2018.

On September 4, 2018, the Commission heard oral argument in Docket No. 2017-370-E related to the Petition to Intervene Out of Time of Transcontinental Gas Pipe Line Company ("Transco Hearing"). At this proceeding, Robert Guild spoke on behalf of Friends of the Earth and the Sierra Club and stated that the relief he sought in this docket, Docket No. 2017-207-E

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<sup>1</sup> SCE&G hereby incorporates its arguments made in its Motion to Dismiss filed on July 19, 2017, and all accompanying pleadings, into this Motion to Dismiss and does not waive any of the arguments made in those pleadings.

had largely been granted through recent events. Given this statement, SCE&G again seeks dismissal of the Complaint/Petition.

### **ARGUMENT**

The present docket should be dismissed for two reasons. First, the relief sought is not available under the statutory provisions under which the Petition/Complaint was filed and is duplicative of the relief sought in now Docket No. 2017-370-E. Second, Complainants themselves admit that they have already been granted the crux of the relief they seek; therefore, no further action from the Commission is necessary.

Complainants sought three things from the Commission in its Petition/Complaint: “a formal adjudicatory proceeding [1] to determine the prudence of acts and omissions by SCE&G in connection with the project; [2] to consider and determine the prudence of abandonment of the subject Project [i.e., to order abandonment] and of the available least cost efficiency and renewable energy alternatives; [3] and to remedy, abate and make due reparations for the unjust and unreasonable rates to be charged to ratepayers related thereto.” (Compl./Pet. at 1-2.)

At the Transco Hearing, Mr. Guild stated:

My clients filed a proceeding in Docket -207 that raised three substantial issues, two of which have largely been resolved in the sense that the project that we have been critical of for the last ten years has indeed been canceled, been abandoned. But we also ask that you consider the impact of that on ratepayers. And, finally, thirdly, we ask that you consider the replacement energy future for South Carolina in lieu of the abandonment of the V.C. Summer projects, and that of course squarely is reflected in who will and how will customers of South Carolina Electric & Gas be provided with electric and gas utility services.

(09/04/18 Transco Hearing Tr. at 40.) Through this admission, Mr. Guild himself states that issues related to the need for cancellation of the project and immediate impact of the cancellation on customers’ rates, have largely been resolved by Order No. 2018-459, by which the

Commission ordered immediate rate reductions and refunds, or will be resolved in Docket No. 2017-370-E. His other issue, an evaluation of renewable energy alternatives, has been raised by other parties in Docket No. 2017-370-E; however, the question of how to meet SCE&G's energy supply needs going forward is not properly raised in this docket.

The Complaint/Petition is filed under S.C. Code Ann. § 58-27-960, which says nothing about generation supply decision, and expressly prohibits the recovery of reparations in cases – like this one – “wherein the rate or charge in question has been authorized by law.” S.C. Code Ann. § 58-27-960; *see also S.C. Elec. & Gas Co. v. Pub. Serv. Comm’n*, 275 S.C. 487, 490, 272 S.E.2d 793, 795 (1980) (holding that the Commission has no authority to direct refunds pursuant to past-approved lawful rates). Even assuming that § 58-27-960 could authorize rate relief here (which it cannot), it still would not authorize a proceeding to evaluate renewable energy alternatives.

The appropriate places to consider future generation supply decision are in connection with: (1) SCE&G's Integrated Resource Plan (“IRP”); (2) SCE&G's Distributed Energy Resources Plan (“DERP”), which has been approved under the terms of the South Carolina Distributed Energy Resources Act, S.C. Code Ann. §§ 58-39-110, *et seq.*; and (3) proceedings under the Utility Facility Siting and Environmental Protection Act, S.C. Code Ann. §§ 58-33-10, *et seq.* In fact, the DERP sets specific goals and targets for renewables which were adopted in Order No. 2015-512, and which SCE&G is meeting, as testimony in Docket No. 2018-2-E has shown. These are the appropriate places to review renewables issues, not a filing for rate reparations under S.C. Code Ann. § 58-27-960.

Furthermore, in total, any Commission ruling in this docket will be duplicative, if even made, rendering this docket moot. *See Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief.”). Likewise, as SCE&G has maintained throughout the course of these proceedings, a full opportunity to evaluate the prudence of the project is available to Complainants in Docket No. 2017-370-E, where SCE&G filed for Commission review of proposed rates and a prudence determination for abandonment of the project. Allowing the present docket to continue will result in duplicative testimony and wasted Commission time, especially considering, as explained in SCE&G’s July 19, 2017 Motion to Dismiss, that the relief sought is improper. In fact, all of the parties and the Commission have now wasted time with needless filings of duplicative testimony. *See, e.g.*, Order No. 2009-496 (July 17, 2009) (the Commission exercised “its discretion for purposes of judicial economy” and dismissed case.); Order No. 2007-764 (Nov. 19, 2007) (dismissing Complaint because issues were repetitive and a “waste of economic and judicial resources”).

### **CONCLUSION**

For the reasons set forth above, the Commission should dismiss the Complaint/Petition in this docket. The principal claim for relief in this matter—seeking an order halting construction spending—is now moot with the filing of the Petition in 2017-370-E. The second claim for relief in this matter—seeking an order for immediate reparations and refunds—is now moot given Order No. 2018-459. The third claim for relief in this matter—evaluation of renewable

energy alternatives—is not a legal basis for filing a contested case. Therefore, there is no need for this docket to continue, and no interests that will not be served if it is dismissed.

Respectfully submitted,

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October 8, 2018

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Defendant/Respondent )

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one copy of SCE&G's Motion to Dismiss Complaint/Petition of Friends of the Earth and Sierra Club to the persons named below at the addresses set forth via electronic mail:

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